(1)

Supreme Court, U.S.
FILED
06-565 AUG 7 - 2006
OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

In re ANDREW J. JOHNSON

On Petition For An Extraordinary Writ
Of Habeas Corpus
To The Supreme Court, State Wyoming

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Andrew J. Johnson
P. O. Box 877
Haskell, TX 79521
(940) 864-5694

QUESTIONS PRESENTED

Can a state court deprive any person of life, liberty, or property, without due process of law or deny to any person within its jurisdiction the equal protection of the laws

LIST PARTIES

[x] All parties appear in the caption of the case of the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to proceedings in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINION BELOW	1
JURISDICTION	2, 3
CONSTITUTION	4
STATEMENT OF CASE	5
REASONS FOR GRANTING THE PETITION.....	6, 7, 8
CONCLUSION	9

INDEX TO APPENDICES

VOLUME I

APPENDIX A	Decision of State Supreme Court Denying Petition for Writ of Habeas
APPENDIX B	Decision of Trial Court Denying Petition for Writ of Habeas Corpus
APPENDIX C	Judgment and Sentence

VOLUME II

APPENDIX D	Petition for Writ of Habeas Corpus by Johnson to the Trial Court
APPENDIX E	Request of Service by Another Person by Johnson
APPENDIX F	Petition for Writ of Habeas Corpus/ w Memorandum in Support of Habeas Corpus by Johnson to Wyoming Supreme Court
APPENDIX G	Motion to Dismiss Petition for Writ of Habeas Corpus by Respondents
APPENDIX H	Reply, Petition for Writ of Habeas Corpus by Johnson
APPENDIX I	Letter from the Supreme Court of Wyoming
APPENDIX J	DCI Lab Report by Jalene A.Griffin
APPENDIX K	Trial Transcript
APPENDIX L	County Court Transcript

TABLE OF AUTHORITIES CITED

CASE	PAGE NUMBER
Holm v. State, 404 P.2d 740 (Wyo. 1965)	7
Johnson v. State, 806 P.2d 1282 (Wyo. 1991)	5
In re Nielsen 131 U.S. 183, 184, 9 Sup. Ct. 674	6, 8
STATUTES AND RULES	
28 U.S.C § 2254(a)	3
28 U.S.C §1254(1)	2
U.S. Sup. Ct. R. 10	3
OTHER	
42 U.S.C. §1983	4
U.S. Constitution	
Fourteenth Amendment	4, 6, 7
Article 1. §6 Wyoming Constitution	7

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR AN EXTRAORDINARY WRIT
OF HABEAS CORPUS

Petitioner respectfully prays that an extraordinary writ of habeas corpus issue to review the judgment below.

OPINION BELOW

[ ] For cases from **federal courts:**

The opinion of the United State Court of Appeal appears at Appendix _____ to the petition and is

[ ] report at _____; or

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the United State Court district court appears at Appendix _____ to the petition and is

[ ] report at _____; or

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[x] For cases from **state courts:**

The opinion of the highest court to review the merits at Appendix A to the petition and is

[ ] report at _____; or,

[x] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the First Judicial District court appears at Appendix B to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or

[x] is unpublished

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No. petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the Petition for writ of certiorari was granted to and including _____ (date) on _____date in Application No. _____ A____.

The jurisdiction of this Court is invoked under 28 U.S.C §1254(1)

[x] For cases from **state courts:**

The date on which the highest states court decided my case was May 16, 2006. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was hereafter denied on the following date:_____, and a copy of the or denying rehearing appears at Appendix ____.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date)on _____ (date) in Application No. ____A___.

Mr. Johnson shows how his writ will be in aid of the Court's appellate jurisdiction as follows: The State Supreme Court of Wyoming has decided an important question of federal law that has not been, but should be, settled by this

Court, or has decided an important federal question in a way that conflicts with relevant decision of this Court. Rule 10 (c), and exceptional circumstance warrant the exercise of the Court's discretionary power, and adequate relief cannot be sought in any other form or any other court. Since Mr. Johnson had filed his petition for writ of habeas corpus in the State Supreme Court of Wyoming last resort.

Further, Mr. Johnson states the reason why he did not make the application to the district court in which he was held: It was due to the order of the district court that Mr. Johnson may not file any future petition for a writ of habeas corpus in the district court relating to his conviction for aggravated burglary and first-degree sexual assault, and being adjudged a habitual criminal; Case Docket No. 99-CV-15-D.

The jurisdiction of this Court is invoked under 28 U.S.C §2254(a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves Amendment XIV to the United States constitution, which provides

Section 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce and law which shall abridge the privileges or immunities of citizen of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provision of this article.

The Amendment is enforced by title 42 Section 1983,United States Code:

Every person who, under color of any statute ordinance, regulation, custom, or usage of any State, Territory, or the District Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof the deprivation of any rights, privileges, or immunities secured by the Constitution and law shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section any Act of Congress applicable exclusively to the District of Columbia shall be considered to be statute of the District of Columbia.

STATEMENT OF CASE

On June 11, 1989, Johnson was arrested and charged with aggravated burglary and first degree sexual assault (App. L). In September 27, 1989, a jury convicted Johnson on both charges. On October 25, 1989, Johnson was sentence to the Wyoming Penitentiary (App. C). Johnson timely appealed the conviction to Wyoming Supreme Court. On March 4, 1991, the Wyoming Supreme Court affirmed the conviction. See State v. Johnson, 806 P.2d 1282 Wyo. 1991.

On January 9, 2006, Johnson filed a Petition for Writ of Habeas Corpus. App. D.

On January 31, 2006, Johnson filed a Request for Service by Another Person. App. E.

On March 23, 2006, the District Court for the First Judicial District, Laramie County, dismissed the Writ of habeas. App. B.

On May 1 2006, Johnson filed a Petition for Writ of Habeas/w Memorandum in support of petition for Writ of Habeas Corpus to the Wyoming Supreme. App. F.

On May 9, 2006, the Respondent filed a Motion to Dismiss Petition for Writ of Habeas Corpus. App. G.

On May 15, 2006, Johnson sent his Reply, Petition for Writ of Habeas Corpus. App. H.

On May 16, 2006, the Wyoming Supreme Court entered its Order Denying Petition for Writ of Habeas Corpus. App. A.

On May 24, 2006, the Clerk of the Wyoming Supreme Court sent a letter to Mr. Johnson informing him that his Reply that the Court determined that it would not have changed the outcome of his petition. Therefore, the order denying petition for writ of habeas corpus filed on May 16, 2006, stand as the Court's decision in this matter. App. I.

REASONS FOR GRANTING THE PETITION

I.

THE QUESTION PRESENTED IS CAN A STATE COURT DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITH OUT DUE PROCESS OF LAW OR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTIONOF THE LAWS

The supreme court to the United States, in a recent case, say: "It is difficult to see why a conviction and punishment under unconstitutional rights than an unconstitutional conviction under a valid law," [In re Nielson, 313 U.S. 183, 9 Sup. Ct. 674.] Under this rule, if a court errs in assuming jurisdiction where it does not possess it, or interpreting a constitutional immunity or right, the jurisdiction over him ceases, and its act, not simply erroneous, but void.

The state's expert witness Jalene A. Griffin, Forensic Serologist of the State Crime Laboratory, testified about her Report. See (A copy of the State v. Johnson Wyoming District Court first Judicial District, Docket No. 19-373; Transcript of Proceeding Jury Trial September 25, 26, and 27, 1989, p. 235 lines 1-3) (App. K). In her Report she reported of finding of seminal fluid was present and an ABO type was not determined on vaginal samples (Item 1) of Laurie Slagle. See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 3) (App. J). Since there was no ABO type determined on seminal fluid on the biological evidence kit of Laurie Slagle as State's Exhibit No. 2. There is no biological evidence that indicate Mr. Johnson as the person who had broke into her home and sexually assaulted her.

Therefore, Trial Court lacked jurisdiction over the subject matter (Johnson), and authority to render the particular judgment, which violated his constitutional right to due process of law, under the 14th Amendment to the United

States Constitution and of Article 1. §6 Wyoming Constitution.

The language of the 14th Amendment to the United States Constitution and of Article 1. §6 of Wyoming Constitution is unequivocal and clear. Both declare that no person shall be deprived of life, 'liberty' or property without due proceed of law. Holm v. State, 404 P.2d 740 742 (Wyo. 1965).

II.

THE SUPREME COURT OF WYOMING HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT

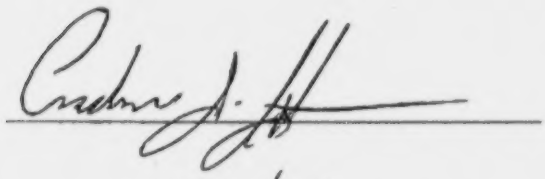
In re Nielsen, 131 U.S. 184, 9 Sup. Ct. 674, it is said; "A party is entitled to a habeas corpus, not merely where the court is without jurisdiction of the cause, but where it has no constitutional authority or power to condemn the prisoner.

By the Supreme Court of Wyoming denying a Constitutional claim in the context of a petition for habeas corpus (App. A), it denied Mr. Johnson his right to due process of law and equal protection of the laws.

CONCLUSION

The petition for an extraordinary writ of habeas corpus should be granted.

Respectfully submitted,



Date: 10/11/06

Supreme Court, U.S.
FILED

06-565 AUG 7 - 2006

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

In re ANDREW J. JOHNSON

_____

APPENDIX TO PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS OF JOHNSON

VOLUME

I

Andrew J. Johnson # 15223
P.O. Box 877
Haskell, TX 97521

IN THE SUPREME COURT, STATE OF WYOMING

ANDREW J. JOHNSON	)	
	)	IN THE SUPREME COURT
Petitioner,	)	STATE OF WYOMING
	)	***No. 06-97*** FILED
v.	)	MAY 16 2006
	)	JUDY PACHECO, CLERK
JILL WATSON, Warden , Rolling Plains Regional Detention Center; ROBERT O. LAMPERT, Director Wyoming Department of Corrections; and PATRICK CRANK, Wyoming Attorney General,	)	s/ Caral Thompson
	)	by DEPUTY
	)	
Respondents.	)	

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter came before the Court upon a Petition for Writ of Habeas Corpus, filed herein May 1, 2006. After a careful review of the petition, the materials attached hereto, the "Motion to Dismiss Petition for Writ of Habeas Corpus," and the file, this Court finds that the petition should be denied. Petitioner makes no coherent or meritorious claim

"Appendix A"

that the district court lacked jurisdiction over the subject matter, over the person of the defendant, or to render the particular judgment. It is, therefore,

ORDERED that the Petition for Writ of Habeas Corpus, filed herein May 1, 2006, be and hereby is denied.

DATED this 16th day of May, 2006.

BY THE COURT:

s/ William U. Hill
WILLIAM U. HILL
Chief Justice

IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

STATE OF WYOMING, COUNTY OF LARAMIE

DOCKET NO. 19-373

STATE OF WYOMING,	)	
	)	FILED
v.	)	MAR 28 2006
	)	GERRIE E. BISHOP
ANDREW J. JOHNSON,	)	CLERK OF THE DISTRICT COURT
	)	
Defendant.	)	

ORDER DISMISSING PETITION OF WRIT OF HABEAS CORPUS RELIEF AND REQUEST FOR SERVICE BY ANOTHER PERSON

THIS MATTER came before the Court upon Defendant's pro se Petition for Writ of Habeas Corpus Relief and Request for Service by Another Person. The Court, being fully advised, finds:

That petitioner's request is facially without merit and is dismissed with prejudice. The Petitioner argues that the District Court for the First Judicial District in Laramie County, Wyoming lacked jurisdiction over the subject

"Appendix B"

matter, and authority to render the particular judgment in the proceeding in State v. Johnson,Docket No. 19-373. Petitioner was convicted and sentence on October 20, 1989.

petitioner argues that the District Court lacks jurisdiction since Petitioner no longer is physically in the jurisdiction of the State of Wyoming and is now being housed in the State of Texas at the Rolling Plains Regional Detention Center.

WYO. CONST. art. V, § 5 states in relevant part that, "The district court shall have original jurisdiction of all causes both at law and in equity and in all criminal cases, of all matters of probate and insolvency and of such special case and proceedings as are not otherwise provided for." Thus, the District Court did have proper jurisdiction and authority to render particular judgment in the proceeding stated above.

Furthermore, the Request for Service by Another Person is denied. Should these unnecessary and often

Statute 6-3-301© (ii), 1977 Republished Edition and one count First Degree Sexual Assault as proscribed by Wyoming Statute 6-2-302 (a) (i), 1977 Republished Edition, and further having been found by the same jury of twelve (12) persons to be a person previously convicted four (4) times of a felony upon charges separately brought and tried, which arose out of separate occurrences either in this State or elsewhere;

AND, the Defendant, after having been accorded an opportunity to make a statement in his own behalf and present any information in mitigation of the punishment, was thereupon asked by the Court whether he had anything to say why judgment should not be pronounced against him; and the Defendant not having given any good or sufficient reason why judgment of the Court should not be pronounced, and the Court being fully advised on all matter pertinent herein;

AND the Court having considered probation in this matter and finding that it is inappropriate for this case;

IT IS FURTHER ORDERED that ANDREW J JOHNSON is guilty of the of the crimes charged in the Information filed herein and that he is an habitual criminal and he shall be sentenced pursuant to Wyoming Statute § 6-10-201(b) (ii), 1977 Republished Edition, to wit: that he be imprisoned and confined in the Wyoming State Penitentiary located at or near the city of Rawlins, Wyoming for the rest of his natural life; that during such confinement he be clothed, subsisted and treated in all respects in according with the rules and regulations governing said institution, there to be safely kept until the term of this sentence is fully complied with or until he shall have been sooner discharged in accordance with law.

IT IS FURTHER ORDERED that the Defendant shall pay to the Victim's Compensation Fund, as required by W.S. 12-40-119 (a), 1977 Republished Edition, the sum of $50.00 by cash, certified check or money order payable to

frivolous motions continue, the Court may be forced to sanction the Petitioner under W.R.C.P. 11.

IT IS THEREFORE ORDERED that the above named requests are DENIED.

Dated this 23 day of 3 2006.

s/s) EDWARD L. Grant
EDWARD L. GRANT
DISTRICT JUDGE

cc: District Attorney
Andrew Johnson

I hereby certify that I distributed a true and correct copy of the foregoing this ___ day of _____, 2006, as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]

_____
Deputy Clerk/Judicial Assistant

STATE OF WYOMING COUNTY OF LARAMIE SS. CERTIFICATE

I Gerrie E. Bishop, Clerk of the District Court in and for Laramie County Wyoming, do hereby certify that the within and foregoing is a full true correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court the 28 day of Mar. 20 06.
GERRIE E. BISHOP
Clerk of District Court
s/ By Sue Heiddee
Deputy

STATE OF WYOMING)
) ss:
COUNTY OF LARAMIE) IN THE DISTRICT COURT

FIRST JUDICIAL DISTRICT

Doc. 19 No. 373

THE STATE OF WYOMING,)
)
Plaintiff,) FILED
)
ANDREW J. JOHNSON,) OCT 25 1989
) GERRIE E. BISHOP
Defendant.) CLERK OF THE DISTRICT COURT

JUDGMENT AND SENTENCE OF THE COURT

THE ABOVE-NAMED DEFENDANT appearing before the Court this 20th day of October, 1989, with his attorney, David L. Serelson, for judgment and sentence after having been found guilty by a jury of twelve (12) persons of the crime charged in the Information herein, to wit: one count Aggravated burglary, as proscribed by Wyoming

"Appendix C"

the Clerk of the District Court, Third Floor, County building, Cheyenne, Wyoming,

IT IS FINALLY ORDERED that the Defendant be remanded to the custody of the Sheriff of Laramie County and by said Sheriff delivered to the Warden, keeper or proper Officer in charge of the Wyoming State Penitentiary in the manner and within the time required by law and that he be kept and detained by the Warden according to this Judgment and Sentence.

DATED THIS 25 day of October 1989.

s/ Nicholas G. Kalokathis
NICHOLAS G. KALOKATHIS, DISTRICT JUDGE

Approved as to Form:

s/ Jon R. Forwood
JON R. FORWOOD

David L. Serelson

STATE OF WYOMING COUNTY OF LARAMIE SS: CERTIFICATE
I Gerrie E. Bishop, Clerk of the District Court in and for Laramie County Wyoming, do hereby certify that the within and foregoing is a full true correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.
Witness my hand and seal of said court the 25th day of October 1989
GERRIE E. BISHOP Clerk of District Court
s/ By Patricia Vubon
Deputy

Supreme Court, U.S.
FILED
06-565 AUG 7 - 2006
OFFICE OF THE CLERK

(2)

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In re ANDREW J. JOHNSON

APPENDIX TO PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS OF JOHNSON VOLUME II

Andrew J. Johnson # 15223
P.O. Box 877
Haskell, TX 97521

MR. ANDREW J. JOHNSON
Prison No. 15223
P.O. Box 877
Haskell, TX 79521

STATE OF WYOMING) IN THE DISTRICT COURT
) ss.
COUNTY OF LARAMIE) FIRST JUDICIAL DISTRICT

Docket No. 19-373

FILED
JAN 09 2006
GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

ANDREW J. JOHNSON,)
)
Petitioner,)
)
v.) PETITION FOR WRIT OF
) HABEAS CORPUS RELIEF
JILL WATSON,) Pursuant to §1-27-101 ET SE
Warden, Rolling Plains) SEQ. WYO. STAT (2006)AS
Regional Detention) AMENDED
Center; ROBERT O.)
LAMPERT Director)
Wyoming Department of)
Corrections; and)
PATRICK CRANK,)
Wyoming Attorney)
General,)
)
Respondents.)

"Appendix D."

(i) I, Andrew J. Johnson for whom the writ is sought is restrained of his liberty, by Mrs. Jill Watson, and is restrained in the State of Texas at the Rolling Plains Regional Detention Center. The parties are Mrs. Jill Watson, Warden of the Rolling Plains Regional Detention Center; Mr. Robert O. Lampert, Director of the Wyoming Department of Corrections and Mr Patrick Crank, Wyoming Attorney General.

(ii) The cause/reason for the restrain according to the best information of the petitioner a follows:

On June 11, 1989, Laurie L. Slagle, gave he statement to the Cheyenne Police Officers that th petitioner had broken into her home ad sexual assaul her. The petitioner was arrested on June 11, 1989.

On June 11, 1989, Jalene A. Griffin, Forensic Serologist of the State Crime Laboratory received from Dean Kolkman of the Cheyenne Police Department, two sexual assault-biological evidence kits of Laurie Slagle and petitioner.

On June 14, 1989, the County Court appointed counsel, David Serelson, Assistant Public Defendant, to represent the petitioner. See (A copy of the County Court Transcript) Annexed.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of the petitioner and reported her finding of antigens in whole blood samples of the petitioner (Item 2). See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 2) Annexed.

On July 7, 1989, Jalene A. Griffin performed the

test on the sexual assault-biological evidence kit o Laurie Slagle and reported her finding of the presence o spermatozoa and MHS-5 antigens in the vaginal sample of Laurie Slagle (Item 1) indicated that seminal fluid wa present. An ABO type was not determined on th vaginal samples (Item 1). See (A copy of the DCI Repor by Jalene A. Griffin, p. 1¶ 3) Annexed.

On August 2, 1989, David Serelson, attorney fo petitioner, received a copy of Jalene A. Griffin, Forensi Serologist of the State Crime Laboratory report fron Jon R. Forwood, Deputy District Attorney, Larami County of Griffin's finding of the presence o spermatozoa and MHS-5 antigens in the vaginal sample of Laurie Slagle (Item 1) indicated that seminal fluid wa present. An AO type was not determined on the vagina samples (Item 1). See (A copy of the DCI Report b Jalene A. Griffin p. 1 ¶ 3) Annexed.

On September 27, 1989, the Jury convicted petitioner base upon the sexual assault-biological kit of Laurie Slagle State's Exhibit No. 2.

On October 25, 1989, Petitioner was sentence to the Wyoming State Penitentiary. See (A copy of the Judgment and Sentence of the Court) Annexed.

The petitioner timely appealed the conviction to the Wyoming Supreme Court. On March 4, 1991, the Wyoming Supreme Court affirmed the conviction. See State v. Johnson, 806 P.2d 1282 (Wyo. 1991).

(iii) The restraint is illegal; due to the District Court for First judicial District, Laramie County lack of jurisdiction over the subject matter, and authority to render the particular judgment which resulted in a substantial denial of petitioner's right under the Constitution of the United States and of the State of

Wyoming, specifically Art. 1 § 6 and the Fourteenth Amendment to the Constitution of the United States, Petitioner state as follows:

The language of the 14th Amendment to the United States Constitution and of rt. 1 § 6, Wyoming Constitution, is unequivocal and clear. Both declare that no person shall be deprived of life, 'liberty' or property without due process of law. Holm v. State, 404 P.2d 740, 742 (Wyo. 1965).

In a habeas corpus where questions that have been at all passed upon by courts are involved the province of the proceedings is to inquire only into jurisdiction matter, and the habeas corpus proceeding cannot be used to take the place simply of proceeding in error. This has been passed upon in several cases by the Wyoming Supreme Court. See Fisher v. McDaniel, 9 Wyo. 457, 64 P. 1056, 87. Am St. Rep. 971; Young v.

Hehm, 12 Wyo. 289, 75 P.443, 109 Am. St. Rep. 986; Miskinnins v. Shaver, 8 Wyo. 392, 58 P. 411, 49 L.R.A. 831.

in the last mentioned case, in the opinion by Judge Corn, on pages 408 and 409 0f 8 Wyo., on page 415 of 58 P. (49 L.R.A 831), he reviews authorities and states the distinction and what the province of a writ of habeas corpus in cases of this kind is, to the effect that only the jurisdiction of the person and subject matter are to be considered, but as whether the court had authority to render the particular judgment or to make the particular order complained of in the proceedings, and quotes Brown on jurisdiction with approval as to what are the three essential elements necessary to render a judgment or order valid as to jurisdiction, so that it will withstand the test by habeas corpus:

> "These are that the court must have jurisdiction over the subject-matter, the person of the defendant, and

authority to render the particular judgment. If either of these element are locking, the judgment is fatally defective."

See. Ex parte Madson, 25 Wyo. 338, 169 P. 336 (Wyo. 1917).

The Petitioner, Andrew J. Johnson (herein after Johnson), dose present to this Court, that it is Johnson's contention that the District Court for First judicial District, Laramie County, lacked sufficient jurisdiction over the subject-matter and authority to render the particular judgment in the proceeding in State v. Johnson Wyoming District Court, First Judicial District, Docket No. 19-373.

On June 11, 1989, Laurie Slagle, gave her statement to the Cheyenne Police Officers that Johnson had broken into her home and sexual assault her. Johnson was arrested on June 11, 1989.

on June 11, 1989, Jalene A. Griffin, Forensic Serologist of the State Crime Laboratory received from Dean Kolkmam of the Cheyenne Police Department, two(2) sexual assault-biological kits of Laurie Slagle and petitioner.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of the petitioner and reported her finding of antigens in whole blood samples of the petitioner (Item 2). See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 2) Annexed.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of Laurie Slagle and reported her finding of the presence of spermatozoa and MHS-5 antigens in the vaginal samples of Laurie Slagle (Item 1) indicated that seminal fluid was

present. An ABO type was not determined on the vaginal samples (Item 1). See (A copy of the DCI Report by Jalene A. Griffin, p. 1¶ 3) Annexed.

Johnson's ABO type was not determined on the vaginal samples (Item 1) of the sexual assault-biological evidence kit of Laurie Slagle. See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 3) Annexed.

In this case the trial court had exceeded its jurisdiction over the subject-matter, the person Johnson, and authority to render the particular judgment.

(iv) The legality of the restraint of Johnson has not been adjudge in a prior proceeding, of the same character, to the best of the knowledge and belief of Johnson.

(v) In the present case, the issue, which is being raised in this petition for writ, has not been made to or refused by any court or judge.

(vi) Johnson brings this petition for writ of habeas corpus before this Court for the following reasons:

(a) Johnson is no longer in the physical jurisdiction of the State of Wyoming and is now being housed in the State of Texas at the Rolling plains Regional Detention Center.

(b) Johnson is no longer in the physical jurisdiction of the Second Judicial District, County of Carbon, State of Wyoming.

(c) This Court is the court or judge must convenient in a point of distance from the State of Texas for Johnson.

WHEREFORE, Petitioner prays that the court grants such relief as he may be entitled to in this proceeding.

s/ Andrew J. Johnson

VERIFICATION

I, Andrew J. Johnson, being duly sworn and say that he is the petitioner in the above action, that he has read the above pleading and that the information contained therein is true and correct. Wyo. Stat. § 1-27-102.

Executed at Haskell, TX 79521 on January 5th, 2006.

s/ Andrew J. Johnson

STATE OF TEXAS)
) ss.
COUNTY OF HASKELL)

Sworn to before me this 5 day of January 20 06.

[Notary Seal Stamp]

s/ Katharine Lozano
NOTARY PUBLIC

Mr. Andrew J. Johnson
Prison No. 15223
P.O. Box 877
Haskell, TX 79521

FILED
JAN 31 2006
GERRIE E. BISHPO
CLERK OF THE DISTRICT COURT

STATE OF WYOMING) IN THE DISTRICT COURT
) ss.
COUNTY OF LARAMIE)FIRST JUDICIAL DISTRICT

ANDREW J. JOHNSON,
Petitioner,
v.
JILL WATSON, Warden Rolling Plains Regional Center; ROBERT O. LAMPERT, Director Wyoming Department of Corrections; and PATRICK CRANK, Wyoming Attorney General,
Respondents.

) Docket No. 19-373

REQUEST FOR SERVICE BY ANOTHER PERSON

COME NOW Petitioner, Andrew J. Johnson, pro se and respectfully moves the court for an Order of Service by "Appendix E."

another person, namely Jennifer Strickland, Case Manger-Wyoming State Inmates in Haskell, Texas, for reason stated by David Halliburton, Sheriff Haskell Court, Texas; See (A copy of letter) Annexed; on the petitioner's petition for habeas corpus relief pursuant to W.S. § 1-27-101 filed on January 9, 2006.

DATED this 26th day of January 2006.

s/ Andrew J. Johnson
ANDERW J. JOHNSON
Pro Se
P.O. Box 877
Haskell, TX 79521

HASKELL COURT SHERIFF'S DEPARTMENT
P.O. Box 675, Haskell, TX 795212

[The State of Texas]
Seal Stamp

DAVID HALLIBURTON
SHERIFF

January 23, 2006

Mr. Andrew J. Johnson
Prison No. 15223
Post Office Box 877
Haskell, Texas 7524

Dear Mr. Johnson,

I received your letter by mail on January 20, 2005, in reference to serving a writ on the Warden at Rolling plains jail. I am sorry to tell you that I can't serve this writ. Under Texas law the Sheriff is not required to serve this type of writs. If you want the Warden served you can hand it to her yourself or send it by certified mail as you did to me.

I am returning your writ to you along with your money order.

Sincerely,
s/ David Halliburton
David Halliburton, Sheriff Haskell County, Texas

IN THE SUPREME COURT
STATE OF WYOMING
FILED
MAY – 1 2006
JP
JUDY PACHECO, CLERK

Mr. Andrew J. Johnson
Prison No. 15223
P.O. Box 877
Haskell, TX 7521

IN THE SUPREME COURT, STATE OF WYOMING

ANDREW J. JOHNSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 06-97**
	)	
JILL WATSON, Warden, Rolling Plains Regional Detention Center; ROBERT O. LAMPERT, Director Wyoming Department of Corrections; and PATRICK CRANK, Wyoming Attorney General,	)	
	)	
Respondents.	)	

Petition for Writ of Habeas Corpus

COME NOW, Andrew J. Johnson for whom the

return of Patrick Crank; Attorney General, State of Wyoming to the writ of habeas corpus herein alleges and respectfully shows:

1. Andrew J. Johnson denied the Respondent's return that he fails to state a cognizable claim.

2. And, further replying to said return, said Andrew J. Johnson alleges that this Court has consistently held that habeas corpus is a narrowly restricted form of relief from illegal restraint, and the only issue presented is whether the trial court has exceeded its jurisdiction. State, ex rel Hopinson v. District Court, 696 P. 2d 54, 60 (Wyo. 1985), cert denied 474 U.S. 865; Hollibaugh v. Hehn, 13 Wyo. 296, 273, 79 P. 1044 (1904). The only facts to be considered by the reviewing court are "jurisdictional facts". Miskimmins vs. Shaver, 8 Wyo. 392, 408, 58 P. 411 (1899). These

"jurisdictional facts" are those that relate to jurisdiction of the subject matter and of the person, and to the court's power to render the particular judgment in question. Hovery vs. Sheffiner, 16 Wyo. 254, 264, 93 P. 305 (1908).

Mr. Johnson's petition, on its face, set forth a claim upon which upon which relief can be granted.

3. The accuser (Laurie Slagle) gave her testimony and identification of the petitioner as the person who had broke into her home and sexually assaulted her. See (A copy of the State v. Johnson Wyoming District Court First Judicial District, Docket No. 19-373; Transcript of Proceeding Jury Trial September 25, 26, and 27, 1989, pp. 146-151. Annexed.

Jalene A. Griffin, state's expert witness forensic serologist of the state crime laboratory, testified about her report. See (A copy of the State v. Johnson Wyoming District Court First Judicial District, Docket

Come Now, Andrew J. Johnson, pro se, to submitted this memorandum in support of petition for a writ of habeas corpus

I. Issue Presented

Did the District Court for the First Judicial District, Laramie County lack jurisdiction over the subject matter and authority to render the particular judgment.

II. Issue Presented

Did the judge, acted individually and as a member of the court wrongful and willfully in disallowing the writ when it was properly applied.

III. Procedural History

On June 11, 1989, Laurie L. Slagle, gave her statement to the Cheyenne Police Officers that the petitioner had broken into her home ad sexual assault her. The petitioner was arrested on June 11, 1989. On June 11, 1989, Jalene A. Griffin, Forensic Serologist of the State Crime Laboratory received from Dean Kolkman of the Cheyenne Police Department, two

sexual assault-biological evidence kits of Laurie Slagle and petitioner.

On June 14, 1989, the County Court appointed counsel, David Serelson, Assistant Public Defendant, to represent the petitioner. See (A copy of the County Court Transcript) Annexed.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of the petitioner and reported her finding of antigens in whole blood samples of the petitioner (Item 2). See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 2) Annexed.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of Laurie Slagle and reported her finding of the presence of spermatozoa and MHS-5 antigens in the vaginal samples of Laurie Slagle (Item 1) indicated that seminal fluid was

present. An ABO type was not determined on the vaginal samples (Item 1). See (A copy of the DCI Report by Jalene A. Griffin, p. 1¶ 3) Annexed.

On August 2, 1989, David Serelson, attorney for petitioner, received a copy of Jalene A. Griffin, Forensic Serologist of the State Crime Laboratory report from Jon R. Forwood, Deputy District Attorney, Laramie County of Griffin's finding of the presence of spermatozoa and MHS-5 antigens in the vaginal samples of Laurie Slagle (Item 1) indicated that seminal fluid was present. An AO type was not determined on the vaginal samples (Item 1). See (A copy of the DCI Report by Jalene A. Griffin p. 1 ¶ 3) Annexed.

On September 27, 1989, the Jury convicted petitioner base upon the sexual assault-biological kit of Laurie Slagle State's Exhibit No. 2

On October 25, 1989, Petitioner was sentence to the Wyoming State Penitentiary. See (A copy of the Judgment and Sentence of the Court) Annexed.

The petitioner timely appealed the conviction to the Wyoming Supreme Court. On March 4, 1991, the Wyoming Supreme Court affirmed the conviction. See State v. Johnson, 806 P.2d 1282 (Wyo. 1991).

On January 9, 2006, Petitioner filed a petition for writ of habeas corpus relief. See (A copy of the Petition for Writ of Habeas Corpus Relief) Annexed.

On January 31, 2006, Petitioner filed a request for service by another person. See (A copy of the Request for Service by Another Person) Annexed.

On March 23, 2006, the District Court for the First Judicial District, Laramie County, dismissed the writ of habeas. See (A certified copy of the Order Dismissing Petition for Habeas Corpus Relief and

Request for Service by Another Person) Annexed.

IV. Procedural Thresholds

The Constitutions of the United Stats and of the State of Wyoming, specifically Art. 1. § 6 and the Fourteenth Amendment to the Constitution of the United States.

V. Relief Sought

Petitioner rays that the court grant this writ and cause it to be issue though no Application has been made. Wyo. Stat. § 1-27-109.

VI. Argument I

The District Court for the First Judicial District, Laramie County lack of jurisdiction over the subject matter, and authority to render the particular judgment which resulted in a substantial denial of petitioner's right under the Constitution of the United States and the State of Wyoming, specifically Art. 1. § 6 and the Fourteenth

Amendment to the Constitution of the United States, Petitioner state as follows:

The Language of the 14th Amendment to the United States Constitution and Art. 1. § 6, Wyoming Constitution, is unequivocal and clear. Both declare that no person shall be deprived of life, 'liberty' or property without due process of law. Holm v. State, 404 P. 2d 740, 742 (Wyo. 1965).

In a habeas corpus where questions that have been at all passed upon by courts are involved the province of the proceeding is to inquire only into jurisdiction matter, and the habeas corpus proceeding cannot be used to take the place simply of proceeding in error. This has been passed upon in several cases by the Wyoming Supreme Court. See

Fisher v. McDaniel, 9 Wyo. 457, 64 P. 1056, 87. Am St. Rep. 971; Younger v. Hehm, 12 Wyo. 289, 75 P. 443, 109

Am. St. Rep. 986; Moskinnins v. Shaver, 8 Wyo. 392, 58 P. 411, 49 L.R.A. 831.

In the last mentioned case, in the opinion by Judge Corn, on page 408 and 409 of 8 Wyo., on page 415 of 58 P. (49 A.L.R.A. 831), he reviews authorities and states the distinction and what the province of a writ of a habeas corpus incases of this kind is, to the effect that only the jurisdiction of the person and subject matter are to be considered, but as whether the court had authority to render the particular judgment or to make the particular order complained of in the proceedings, and quotes Brown on jurisdiction with approval as to what are the three essential elements necessary to render a judgment or order valid as to jurisdiction, so that it will withstand the test by habeas corpus:

> "These are that the court must have jurisdiction over the subject-matter, the person of the defendant, and authority to render the particular judgment. If either of these element

are locking, the judgment is fatally defective."

See. Ex parte Madson, 25 Wyo. 338, 169 P. 336 (Wyo. 1917).

The Petitioner, Andrew J. Johnson (herein after Johnson), dose present to this Court, that it is Johnson's contention that the District Court for First judicial District, Laramie County, lacked sufficient jurisdiction over the subject-matter and authority to render the particular judgment in the proceeding in State v. Johnson Wyoming District Court, First Judicial District, Docket No. 19-373.

On June 11, 1989, Laurie Slagle, gave her statement to the Cheyenne Police Officers that Johnson had broken into her home and sexual assault her. Johnson was arrested on June 11, 1989.

on June 11, 1989, Jalene A. Griffin, Forensic

Serologist of the State Crime Laboratory received from Dean Kolkmam of the Cheyenne Police Department, two(2) sexual assault-biological kits of Laurie Slagle and petitioner.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of the petitioner and reported her finding of antigens in whole blood samples of the petitioner (Item 2). See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 2) Annexed.

On July 7, 1989, Jalene A. Griffin performed the test on the sexual assault-biological evidence kit of Laurie Slagle and reported her finding of the presence of spermatozoa and MHS-5 antigens in the vaginal samples of Laurie Slagle (Item 1) indicated that seminal fluid was present. An ABO type was not determined on the

vaginal samples (Item 1). See (A copy of the DCI Report by Jalene A. Griffin, p. 1¶ 3) Annexed.

Johnson's ABO type was not determined on the vaginal samples (Item 1) of the sexual assault-biological evidence kit of Laurie Slagle. See (A copy of the DCI Lab Report by Jalene A. Griffin, p. 1 ¶ 3) Annexed.

In this case the trial court had exceeded its jurisdiction over the subject-matter, the person Johnson, and authority to render the particular judgment.

VII. Argument II

The judge, acted individually and as a member of the court wrongfully and willfully in disallowing the writ when it was properly applied.

The instant petition impermissibly question (jurisdiction fact) rather than assailing that the District Court lacks jurisdiction since Petitioner is no longer in physical jurisdiction of the State of Wyoming.

VIII. Conclusion

The District Court for the First Judicial District, Laramie County lack of jurisdiction over the subject matte, and authority to render the particular judgment. The judge, acted individually and as a member of a court wrongfully and willfully in disallowing the writ when it was properly applied.

RESPECTFULLY SUBMITTED April 26th, 2006.

s/ Andrew J. Johnson
Andrew J. Johnson
Pro se
P.O. Box 877
Haskell, TX 795212

IN THE SUPREME COURT

STATE OF WYOMING

ANDREW J. JOHNSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	**Docket No.** 06-97
	)	
JILL WATSON, Warden, Rolling Plains Regional Detention Center; ROBERT O. LAMPERT, Director, Wyoming Dept. of Corrections; and PATRICK CRANK, Wyoming Attorney General,	)	
	)	
Respondents.	)	

MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

Respondents, by and though the Office of the Wyoming Attorney General, move this court for its Order dismissing Petitioner's Petition for Writ of Habeas Corpus

"Appendix G."

because the petition fails to state a claim upon which this court may grant habeas corpus relief. In support of this motion, Respondent show as follows:

State-law habeas corpus relief is available to Mr. Johnson only to challenge the trial court's jurisdiction. State ex rel. Hopkinson v. District Court, 696 P.2d 54, 60 (Wyo. 1985). Mr. Johnson's petition does not state a challenge to the trial court's jurisdiction. Although he contends his claims are jurisdictional, they are not. Mere error of law or irregularities in a criminal case – even those of a constitutional magnitude – are not proper grounds for habeas corpus relief. Only issues that concern the jurisdiction of the court are proper.

"Habeas corpus is not permissible to question the correctness of the action of a grand jury in finding a bill of indictment, or a petit jury in the trial of cause nor of a court or judge when acting within their jurisdiction and in a lawful manner." Hopinson v. State, 798 P.2d 1186, 1188 (Wyo. 1990).

Jurisdiction claims involve the very power of the State to bring the defendant into court. Zanetti v. State, 783 P.2d 134, 139 (Wyo. 1989). This Court cannot address such constitutional claims in the context of a petition for habeas corpus. Accordingly, the petition fails to state a cognizable claim, and Respondent respectfully asks this Court to dismiss it.

Submitted this 9th day of May, 2006

s/ David L. Delicath
David L. Delicath
Senior Assistant Attorney General
123 State Capitol Building
Cheyenne, Wyoming 82002
(307) 777-7977

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS, upon the hereinafter named person by depositing the same in the United States Mail, postage prepaid, this 9th day of May, 2006, addressed as follows:

Andrew J. Johnson
No. 15223
P.O. Box 877
Haskell, TX 79521

s/ Anthony Spencer
Office of the Attorney General

RECEIVED
5-22-06
WYOMING SUPREME COURT

Mr. Andrew J. Johnson
Prison No. 15223
P.O. Box 877
Haskell, TX 79521

IN THE SUPREME COURT, STATE OF WYOMING

ANDREW J. JOHNSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 06-97**
	)	
JILL WATSON, Warden Rolling Plains Regional Detention center; ROBERT O. LAMPERT, Director Wyoming Department of Corrections; and PATRICK CRANK, Wyoming Attorney General,	)	
	)	
Respondents.	)	

REPLY, PETITION
FOR WRIT OF HABEAS CORPUS

Andrew J. Johnson, pro se by this reply to the

"Appendix H."

writ is sought is restrained of his liberty, by Mrs. Jill Watson, and is restrained in the State of Texas at the Rolling Plains Detention Center. The parties are Mrs. Jill Watson, Warden of Rolling Plains Regional Detention Center; Mr. Robert O. Lampert, Director of the Wyoming Department of Corrections and Mr. Patrick Crank, Wyoming Attorney General.

For the reason present in his memorandum in support of the petition, Mr. Andrew J. Johnson, respectfully Submitted this 26th day of April, 2006.

Attorney for Movant:

s/ Andrew J. Johnson
Andrew J. Johnson
Pro se
P.O. Box 877
Haskell, TX 79521

IN THE SUPREME COURT
STATE OF WYOMING
FILED
MAY – 1 2006
JP
JUDY PACHECO, CLERK

Mr. Andrew J. Johnson
Prison No. 15223
P.O. Box 877
Haskell, TX 7521

IN THE SUPREME COURT, STATE OF WYOMING

ANDREW J. JOHNSON,	)	
	)	
Petitioner,	)	
	)	
v.	)	**No. 06-97**
	)	
JILL WATSON, Warden, Rolling Plains Regional Detention Center; ROBERT O. LAMPERT, Director Wyoming Department of Corrections; and PATRICK CRANK, Wyoming Attorney General,	)	
	)	
Respondents.	)	

Memorandum in Support of
Petition for Writ of Habeas Corpus

No. 19-373; Transcript of Proceeding Jury Trial September 25, 26, and 27, 1989, p. 235) (Annexed). In her report, she reported of finding of seminal fluid was present and an ABO type was not determined on vaginal samples (Item 1) of Laurie Slagle. See (A copy of the DCI Lab Report by Jalene A. Griffin) Annexed.

Since no ABO type was determined on seminal fluid on the biological evidence kit of Laurie Slagle as State's Exhibit No. 2. There is no evidence that indicate Andrew J. Johnson as the person who had broke into her home and sexually assaulted her.

WHEREFORE, Andrew J. Johnson prays that said writ be sustained and that he be discharged immediately.

s/ Andrew J. Johnson
Andrew J. Johnson
Pro se

VERIFICATION

I, Andrew J. Johnson, being duly sworn deposes and say that he is the petitioner in the above action, that he has read the above pleading and that the information contained therein is true and correct. Wyo. Stat. § 1-27-102.

Executed at Haskell, TX 79521 on May 15th, 2006.

s/ Andrew J. Johnson

STATE OF TEXAS)
) ss.
COUNTY OF HASKELL)

Sworn to before me this 15 day of May, 20 06.

[Notary Seal Stamp] s/ Diana Simmons
Notary Public

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing **REPLY, PETITION FOR WRIT OF HABEAS CORPUS** was mailed to Mr. David L. Delicath, Senior Attorney General of opposing party or party's attorney at 123 State Capitol Building, Cheyenne, Wyoming 82002 on this day 15th of May, 2006.

s/ Andrew J. Johnson
ANDREW J. JOHNSON
Pro se

Supreme Court of Wyoming

Office of the clerk

[Wyoming Supreme Court Seal Stamp]

JUDY PACHECO, CLERK
CAROL THOMPSON, DEPUTY
307-777-7316

SUPREME COURT BUILDING
2301 CAPITOL AVENUE
CHEYENNE, WY 82002

May 24, 2006

Andrew J. Johnson #15223
P.O. Box 877
Haskell, TX 79521

Re: Case No. 06-97

Dear Mr. Johnson:

Your reply to the State of Wyoming's motion to dismiss petition for writ of habeas corpus was received in this office on May 22, 2006. Your reply was presented to the Court today, and it was determined that it would not have changed the outcome of your petition. Therefore, the order denying petition for writ of habeas corpus filed on May 16, 2006, stands as the Court's decision in this matter.

Sincerely,
s/ Judy Pacheco

jp

"Appendix I."

Christpher A. Crofts
Director
THOMAS J. PAGEL
Deputy Director

OFFICE OF THE
ATTORNEY GENERAL
DIVISION OF CRIMINAL INVESTIGATION
316 W. 22ND STREET CHEYENNE, WYOMING 82002-0001

MIKE SULLIVAN
Governor
JOSEPH B. MEYER
Attorney General

ADMINISTRATION
(307) 777-7181
INVESTIGATION
(307) 777-7182
CRIME LABORATORY
(307) 777-7607
CRIMINAL INTELLIGENCE
(307) 777-7184
CRIMINAL JUSTICE INFORMATION
(307) 777-7523
(307) 777-7545 (Telecom)

July 7, 1989

Dean Kolkman
Cheyenne Police Department
2020 Capitol Avenue
Cheyenne, Wyoming 82001

LABORATORY CASE NO.: 89L0649
CHEYENNE PD CASE NO.: 89-55912

ITEMS EXAMINED

1. One (1) Sexual Assault/Biological Evidence kit (B4727 #5)
2. One (1) Sexual Assault/Biological Evidence kit (B4304 #301)

RESULTS OF EXAMINATION

ABO type O and Lewis type a+b- blood group antigens and PGM subtype 2+1 isoenzymes were identified in the whole blood samples of Laurie Slagle (Item 1). Persons exhibiting this Lewis type are referred to as non-secretors.

"Appendix J."

ABO type B and Lewis type a+b- blood group antigens and PGM subtype 2+1 isoenzymes were identified in the whole blood samples of Andrew Johnson (Item 2). An ABO type was not determined in the saliva sample of Andrew Johnson (Item 2). Person exhibiting this Lewis type and having no detectable blood group antigens in their saliva samples are referred to as non-secretors.

The presence of spermatozoa and MHS- 5 antigens in the vaginal samples of Laurie Slagle (Item 1) indicated that seminal fluid was present. An ABO type was not determined on the vaginal samples (Item 1).

DISPOSITION OF EVIDENCE

Items 1 and 2 will be returned to the submitted agency.

s/ Jalene A. Griffin
Jalene A. Griffin
Forensic Scientist

JAG/nmb

Reviewed: s/ RRC

[Wyoming State Stamp]

WYOMING STATE
ON 8-2-89 AT _____
[ ] A COPY OF [√] ME . . .
THIS DO . . . [ ]
[√] CERTIFIED [ ] . . .
[ ] . . .
s/ Kolkman

WYOMING STATE
ON 8-2-89 AT _____
[√] A COPY OF [ ] ME . . .
THIS DO . . . [ ]
[√] CERTIFIED [ ] . . . [ ] . . .
s/ Forwood

STATE OF WYOMING) IN THE DISTRICT COURT
) ss.
LARAMIE COUNTY) FIRST JUDICIAL DISTRICT

THE STATE OF WYOMING,)
)
Plaintiff,)
vs.) Doc. 19-373
)
ANDREW J. JOHNSON,) FILED
) FEB 20, 1989
Defendant.) Gerrie E. Bishop
Clerk of the District

TRANSCRIPT OF PROCEEDINGS

Jury Trial September 25, 26, and 27, 1989.

The Honorable Nicholas G. Kalokathis, Judge, presiding.

Appearances:

For the State: Jon R. Forwood
Deputy District Attorney

For the Defendant: David L. Serelson
Assistant Public Defender
Cheyenne, Wyoming

Carol Serelson
Attorney at Law
Cheyenne, Wyoming

"Appendix K."

Sentencing Proceedings, October 20, 1989:
The Honorable Nicholas G. Kalokathis, Judge, presiding.

Appearances:

For the State:	Jon R. Forwood Deputy District Attorney
For the Defendant:	David L. Serelson Assistant Public Defender Cheyenne, Wyoming

Q. What were your findings in that examination?
A. As I say in my report, I did find the presence of spermatozoa and seminal fluid in the vaginal swabs.
Q. Now, were you able to identify the blood type?
A. No.
Q. Why not?
A. I did not get a blood type.
Q. And why is it that you did not get a blood type?
A. Either -- there could be two reasons behind that. Either the person isn't a -- the depositor of the seminal fluid is not a non-secretor, or there are time when you just cannot get a type off of a sample.
Q. So that --
A. But it is from a non-secretor status, thought. So you are not getting a blood type out of this.
Q. You didn't get a blood type out of the seminal fluid because it was a non-secretor?
A. A non-secretor, right. I would -- how should I state this – assume not to get a blood type since she was a a non-secretor and he is a non-secretor.
Q. So you did not expect to get a blood type?

A. I did not, not with the evidence that was submitted.

Q. Now, is it then possible to include or exclude Mr. Johnson as the person who left the seminal fluid that

STATE OF WYOMING)
)
COUNTY OF LARAMIE)

I, James E. Grigsby, official court reporter, hereby certify that the foregoing tgranscript of proceedings is a true and correct transcription of my stenographic notes taken on the date indicated.

Date this 18th day of February 1990.

s/ James E. Grigsby

STATE OF WYOMING) IN THE COUNTY COURT
) -ss OF LARAMIE COUNTY
COUNTY OF LARAMIE) CHEYENNE, WYOMING

BEFORE
JUDGE ROBERT W. ALLEN

19-373

STATE OF WYOMING
PLAINTIFF

VS DOCKET CR-8906 PAGE 0037

ANDREW J. JOHNSON
DEFENDANT

FILED
JUN 29, 1989

TRANSCRIPT

GERRIE E. BISHOP
CLERK DISTRICT COURT

JUNE 14, 1989 The Complaint was filed and a warrant was issued for the alleged violation of W.S. 6-3301(c) (ii)-Count 1, W.S. 6-2-302(a) (i)-Count 2.

JUNE 14, 1989 The defendant was present in court and advised of his constitutional rights The complaint was distinctly read to the defendant. The state was represented by Jon R. Forwood. The defendant requested that an attorney be appointed to represent him/her, the request was granted and a certificate for appointment of counsel was executed. "Appendix L."

Bond is set at $20,000.00 cash/surety.

JUNE 28, 1989 — The defendant was present with his/her Attorney, David Serelson. The state was Represented by Jon R. Forwood. Witnesses were sworn, testimony given. It appearing to the court that there is probable cause that the offense charged was committed by the defendant and that there is probable cause for holding the defendant to answer to the offense, the defendant is ordered bound over to District Court. Bond is reduced to $5000. cash/surety.

I, Robert W. Allen, do hereby certify that I am the duly qualified and acting County Judge within and for Laramie County and State of Wyoming, and that the above and foregoing is a full true and correct transcript of the proceedings in the above case at it appears on record in my office in Docket CR-8906, page 0037.

Given under my hand and seal this 29th day of June, 1989.

s/ Robert W. Allen
COUNTY JUDGE

Enclosed:
1 Criminal Complaint
1 Criminal Warrant
1 Affidavit for Court Appointed Attorney
1 Certificate and Order Appointing Counsel
2 Order setting Preliminary Hearing
1 Tape

(3)

No. 06-565

Supreme Court, U.S.
FILED
DEC 19 2006
OFFICE OF THE CLERK

In The

Supreme Court of the United States

In re ANDREW J. JOHNSON

Petition for rehearing of order denying
Petition for a writ of habeas corpus

Johnson present his petition for rehearing of this Court's Order dated November 27, 2006, denying the petition for a writ of habeas corpus, and, in support thereof, respectfully shows: Other substantial ground (insufficient evidence) available to Johnson, although not previously presented upon which the petition is based.

The evidence presented by the State of Wyoming in prosecuting Johnson in his criminal matter included the following the state's expert witness testimony, (Appendix A, Johnson v. State, Wyoming District Court, First Judicial District, Docket No. 19-373; trial transcript), and the state's expert witness who conducted tests on the seminal fluid in the victim, excluding 95% of the population and finding that Mr. Johnson was among the 5% who could have left the seminal fluid. (Id. At pp. 233-237).

The biological evidence used at trial in this case was insufficient, because the state's expert witness who conducted tests on the seminal fluid in the victim was not able to prove Johnson left the seminal fluid. (Id. At p. 237).

In Jackson v. Virginia, 443 U.S. 307, 319 (1979) (habeas relief granted for insufficient evidence because prisoner showed that no rational trier of fact, viewing evidence in light most favorable to prosecution, ("could have found the essential elements of the crime beyond a reasonable doubt").

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, a Writ of habeas corpus issue.

Dated: 12/19/06.

Andrew J. Johnson
Attorney for Petitioner